

ESTTA Tracking number: **ESTTA605534**

Filing date: **05/21/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213057
Party	Plaintiff Hybird Athletics, LLC
Correspondence Address	WESLEY W WHITMYER JR ST ONGE STEWARD JOHNSTON & REENS LLC 986 BEDFORD STREET STAMFORD, CT 06905 5619 UNITED STATES gmartino@ssjr.com, litigation@ssjr.com
Submission	Motion to Compel Discovery
Filer's Name	Wesley W. Whitmyer, Jr.
Filer's e-mail	litigation@ssjr.com
Signature	/Wesley W. Whitmyer, Jr./
Date	05/21/2014
Attachments	Motion to Compel and Exhibits.pdf(1287211 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HYBRID ATHLETICS, LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	

**OPPOSER’S MOTION TO COMPEL
AND MEMORANDUM OF LAW**

Opposer Hybrid Athletics, LLC (“Hybrid”) respectfully moves the Trademark Trial and Appeal Board (“Board”) for an order compelling Applicant Hylete LLC (“Hylete”) to produce confidential information and documents responsive to Hybrid’s March 4, 2014 document requests and interrogatories. Despite Hybrid’s repeated good-faith efforts to obtain this discovery without assistance of the Board, Hylete has maintained its objections to the requested discovery on grounds that it seeks information that is confidential, privacy protected, and/or trade secret. A party cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board’s standard protective order automatically apply. Hylete refuses to produce the requested information despite the fact that it is aware of this rule and that Hybrid has made several good faith efforts to obtain the requested discovery. Accordingly, Hybrid moves to compel confidential information and documents responsive to its discovery requests.

Facts

Hybrid began using its design mark (“the Hybrid Mark”) at least as early as August 1, 2008. (Doc. No. 1, ¶¶ 1-4.) Hybrid’s use has been continuous and substantial. *Id.* Hybrid’s representative, Robert Orlando, offers fitness education and fitness apparel under Hybrid’s mark throughout the United States.

On January 30, 2013, Applicant Hylete filed application no. 85/837,045 to register a nearly identical design mark (“the Hylete Mark”) for nearly identical goods and services based on an alleged first use in commerce at least as early as April 9, 2012. The Office published the Hylete Mark for opposition on June 18, 2013 and Hybrid timely opposed registration based on the similarity of the marks and Hybrid’s senior rights.

On March 4, 2014, Hybrid served interrogatories nos. 1- 21 and document requests no. 1 – 26 on Hylete. (Ex. A and B.) Given that Hybrid’s opposition is based on its prior use and that Hylete contends a date of first use nearly a year before its application filing date, the use of the marks by each party, including the geographic scope, volume of sales, and type of use, among other factors, is highly relevant to Hybrid’s opposition. Accordingly, Hybrid’s discovery requests are focused on how Hylete’s alleged use prior to filing.

On April 3, 2014, Hylete served objections and responses. (Ex. C (Interrogatories) and Ex. D (Document Requests).) Hylete produced 134 pages of documents, none of which were designated as confidential or highly confidential. Similarly, Hylete did not designate any of its discovery responses as confidential or highly confidential. Instead, Hylete objected to the discovery requests on the grounds that they sought confidential information. Specifically, Hylete objected to Document Request Nos. 1, 3-14, 16-18, 20 and 22-26 as “seek[ing] information that is confidential, privacy protected, and/or trade secrets.” Hylete improperly limited the

documents it agreed to produce in response to all document requests to “non-confidential, non-trade secret responsive documents.” Hylete has also improperly objected to Interrogatory Nos. 1-4, 6-10, 12-16 and 20-21 as “seek[ing] information that is confidential, privacy protected, and/or trade secrets.”

Hylete’s refusal to comply with its discovery obligations injures Hybrid in at least two regards. First, Hybrid is precluded from discovering confidential information regarding Hylete’s alleged use of the mark in commerce prior to its filing date. Second, the improper confidentiality objection precludes Hybrid from evaluating the appropriateness of Hylete’s other objections.

Hybrid’s Good Faith Efforts to Resolve the Discovery Dispute

Hybrid has made multiple good faith efforts to resolve this discovery dispute without assistance by the Board. By letter of April 14, 2014, Hybrid first raised the issue of Hylete’s improper objections. (Ex. E.) Hybrid’s letter identified the specific requests at issue and cited the applicable rule and case law holding that “[p]arties cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board’s standard protective order automatically apply.” *Id.* Hybrid’s letter requested a response from Hylete, or in the alternative a meet and confer telephone conference. *Id.*

Counsel for Hylete responded by email of April 23, 2014 and stated that it was consulting with its client regarding the identified discovery issue. (Ex. F.) Hylete requested Hybrid’s “availability next week to confer.” *Id.* The following day Hybrid responded by email stating that it was available for a telephone call on Monday, April 29, 2014 from 2 PM to 5 PM EST. (Ex. G) Hylete never responded to this email.

By email of April 30, 2014, Hybrid again requested Hylete's availability for a telephone conference to discuss the outstanding discovery issue. (Ex. I.) Hybrid stated that "[i]f you do not provide us your availability to meet and confer by the close of business tomorrow, we will assume you are unwilling to cooperate in resolving the issues outlined in our letter of April 14, 2014." *Id.* Hylete responded on Tuesday, May 6, 2014, stating that it was available for a call the next day. (Ex. I.)

On May 7, 2014, counsel for Hybrid and Hylete participated in a telephone call in an effort to resolve the outstanding discovery issue regarding the improper confidentiality objections. Despite the fact that Hybrid attempted to address this issue on multiple occasions and the fact that the parties scheduled this call to specifically discuss the improper confidentiality obligations, counsel for Hylete stated that it still needed to speak with its client. After the call, Hybrid sent a summary of the call to Hylete by email. (Ex. J.) In relevant part, the summary stated that:

Next, I addressed Hylete's objection to certain discovery requests on the grounds that they seek information that is confidential, privacy protected, and/or trade secret. As we explained in our letter of April 14, 2014, a copy of which is attached for your reference, this is not a proper basis for objecting to discovery since the terms of the Board's standard protective order automatically apply. In addition to being an improper basis for objecting, it also prevents us from evaluating and responding to the other discovery objections made in your response. As a result, it is important that we address this as soon as possible.

During the call, I asked you to confirm whether or not your client was withholding documents or information on the grounds that it was confidential, privacy protected, and/or trade secret. You indicated that you needed to speak with your client. We are somewhat surprised that you had not previously discussed this with your client given that we have been requesting a meet and confer on this issue for the past month. In the interest of making a good faith effort to resolve this issue, we will provide three additional days for you to confer with your client before we file our motion to compel. Please provide us with revised discovery responses deleting all objections on the basis that a request seeks information that is confidential, privacy protected, and/or trade

secret. To the extent that you do not provide revised responses deleting these objections, we will file our motion to compel next week.

(Ex. J)

Hylete never responded to this email. In view of the above, Hybrid submits that it has made a good faith effort, by multiple correspondence, attempts to conference, and a conference, to resolve the issues raised in this motion to compel. The parties have been unable to reach an resolution and accordingly the Hybrid requests the Board's assistance.

Argument

The Board should compel Hylete to produce confidential information in response Hybrid's discovery requests because Hylete can limit access to such confidential information by designating it confidential or highly confidential pursuant to the Board's Standardized Protective Agreement. Under 37 CFR § 2.116(g) the "Trial Trademark and Appeal Board's standard protective order is applicable during disclosure, discovery and at trial in all opposition . . . proceedings, unless the parties, by stipulation approved by the Board, agree to an alternate order, or a motion by a party to use an alternative order is granted by the board." Per the Board's October 18, 2013 Order, the parties held a Discovery Conference on December 26, 2013 and discussed "whether to alter or amend the Standard Protective Order." Neither party had any alterations or amendments to the Standard Protective Order.

Despite the fact that Standard Protective Order is in place, Hylete has improperly objected to numerous of Hybrid's discovery requests on the basis that the requests seek information that is confidential, privacy protected, and/or trade secrets. Parties cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board's

standard protective order automatically apply. TBMP 412.01; *see also, Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1706 n.6 (TTAB 2009).

Hylete has improperly objected to Hybrid Document Request Nos. 1, 3-14, 16-18, 20 and 22-26 as “seek[ing] information that is confidential, privacy protected, and/or trade secrets.” Hylete has also improperly limited the documents it has agreed to provide in response to Document Request Nos. 1-26 to “non-confidential, non-trade secret responsive documents.” Finally, Hylete has also improperly objected to Interrogatory Nos. 1-4, 6-10, 12-16 and 20-21 as “seek[ing] information that is confidential, privacy protected, and/or trade secrets.”

The discovery requests seek information that is properly discoverable. For example, they seek information regarding Hylete’s alleged use in commerce of Hylete’s Mark in connection with its identified goods and/or services between its alleged date of first use and the date it filed its application. Accordingly, Hybrid requests that the Board compel this production.

Conclusion

WHEREFORE, Opposer Hybrid moves the Board to:

1. Issue an Order compelling Hylete to respond to all outstanding Interrogatories and Requests for Production of Documents without objection by producing responsive confidential information pursuant to the Board’s Standardized Protective Agreement.
2. Extend the close of discovery with respect to Opposer only, to allow Opposer a reasonable time to take follow-up discovery once Applicant responds to the outstanding discovery requests.
3. Grant such other relief as is appropriate.

HYBRID ATHLETICS, LLC

May 21, 2014

/s/ Wesley W. Whitmyer, Jr.

Wesley W. Whitmyer, Jr.

Andy I. Corea

Michael J. Kosma

St. Onge. Steward Johnston & Reens LLC

986 Bedford Street

Stamford, CT 06905

Tel. (203) 324-6155

Facsimile (203) 327-1096

Email:litigation@ssjr.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S MOTION TO COMPEL
AND MEMORANDUM OF LAW was served by first class mail, postage prepaid on the
Correspondent for the Applicant as follows:

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

5/21/14
Date

/s/ Jessica L. White
Jessica L. White

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	

**OPPOSER HYBRID ATHLETICS' FIRST
SET OF INTERROGATORIES TO APPLICANT**

Opposer, Hybrid Athletics LLC (hereinafter referred to as “Hybrid” or “Opposer”), pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, hereby request that Applicant Hylete LLC (hereinafter referred to as “Hylete” or “Applicant”) respond to the following interrogatories fully, separately, in writing and under oath by an officer thereof. These interrogatories shall be deemed to be continuing to the extent that if the answers to these interrogatories would be changed by information acquired by Applicant subsequent to the service of such answers, Applicant shall promptly thereafter serve supplemental answers reflecting such changes.

In the following interrogatories:

(A) “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories any information which might otherwise be construed to be outside of their scope.

(B) “Applicant” or “Hylete” refers to Hylete LLC and each of its predecessors, successors, subsidiaries and affiliates.


(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.


(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.

(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks, recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant’s actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to,

notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.

(G) “Hylete Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(H) “Hybrid Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) “Opposer” or “Hybrid” refers to Hybrid Athletics LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) Where identification of a person is required, such identification shall, without limitation, include:

- a. the person's full name;
- b. whether it is an individual, corporation, proprietorship, association or other entity;
- c. business address; and
- d. if an individual, his home address or if not known, his last known address, and his present employer and position.

(M) Where identification or description of an act or event is required, such identification or description shall, without limitation, include:

- a. date or dates of occurrence;
- b. place or places of occurrence;
- c. identification of each person present and the name of the organization each represented or was connected with; and
- d. what was said and/or done by each such person.

(N) Where identification of a document is required, such identification should be sufficient for the characterization of the document in a request for production of documents under Rule 34 of the Federal Rules of Civil Procedure and shall, without limitation, include:

- a. the identity of the author;
- b. the date of the document;
- c. the general nature of the document, i.e. whether it is a letter, memorandum, pamphlet, report, advertising matter, advertising proofs, etc.;
- d. the identity of all recipients of copies of the document;
- e. the identity of the person now having possession of the original document and the location of the original;
- f. the identity of each person now having possession of a copy of the document and the location of each such copy; and
- g. for each document which defendant contends is privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds of exclusion;

(O) Where identification of an oral communication is required, such identification shall, without limitation, include:

- a. the identity of the person or persons making the oral communication;
- b. the identity of any persons hearing such oral communication;
- c. the date of such oral communication; and
- d. what was said by all persons participating in said oral communication.

(P) If privilege against provision of information or production of a document is claimed, identify the specific basis therefore, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes;
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(Q) The use of the singular form of any word includes the plural and vice versa.

(R) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

INTERROGATORY NO. 2:

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

INTERROGATORY NO. 3:

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

INTERROGATORY NO. 4:

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

INTERROGATORY NO. 5:

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

INTERROGATORY NO. 6:

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document that evidences such matters, and any person who has knowledge about such matters.

INTERROGATORY NO. 7:

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

INTERROGATORY NO. 8:

Fully describe the facts surrounding the selection of the Hylete Mark.

INTERROGATORY NO. 9:

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

INTERROGATORY NO. 10:

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

INTERROGATORY NO. 11:

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

INTERROGATORY NO. 12:

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

INTERROGATORY NO. 13:

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

INTERROGATORY NO. 14:

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

INTERROGATORY NO. 15:

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

INTERROGATORY NO. 16:

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

INTERROGATORY NO. 17:

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

INTERROGATORY NO. 18:

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

INTERROGATORY NO. 19:

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

INTERROGATORY NO. 20:

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

INTERROGATORY NO. 21:

Identify all manufacturers of goods using the Hylete Mark.

Date: March 4, 2014



Wesley W. Whitmyer, Jr.
Andy I. Corea
Michael J. Kosma
ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 Bedford Street
Stamford, CT 06905
Telephone: (203) 324-6155
Facsimile: (203) 327-1096
Email: litigation@ssjr.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **HYBRID ATHLETICS'**
FIRST SET OF INTERROGATORIES TO APPLICANT was served by first class mail,
postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

3/4/2014
Date

Jeh WE
Jessica L. White

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
Hylete LLC,	:	
	:	
Applicant.	:	

**OPPOSER HYBRID ATHLETICS' FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Opposer, Hybrid Athletics LLC (hereinafter referred to as “Hybrid” or “Opposer”), pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, hereby serves upon Applicant Hylete LLC (hereinafter referred to as “Hylete” or “Applicant”), the following requests for production of documents to be fulfilled separately and fully by mailing copies of all responsive documents to the office of Opposer's attorneys, St. Onge Steward Johnston & Reens, 986 Bedford Street, Stamford, Connecticut 06905 and by making the originals available for future inspection and possible use at any hearing, or under such other terms as may be mutually agreed to by counsel for the parties. These requests shall be deemed to be continuing to the extent that if additional responsive documents are discovered by Applicant subsequent to the initial production, Applicant shall promptly thereafter produce the newly discovered documents or copies thereof.

In the following Requests:

(A) “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories any information which might otherwise be construed to be outside of their scope.

(B) “Applicant” or “Hylete” refers to Hylete LLC and each of its predecessors, successors, subsidiaries and affiliates.

(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.


(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.


(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks,

recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant's actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.



(G) "Hylete Mark" means the trademark "  " alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.



(H) "Hybrid Mark" means the trademark "  " alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) "Opposer" or "Hybrid" refers to Hybrid Athletics, LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) If privilege against provision of information or production of a document is claimed, identify the specific basis therefor, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes:
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(M) The use of the singular form of any word includes the plural and vice versa.

(N) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

Requests for Production

REQUEST NO. 1:

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

REQUEST NO. 2:

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

REQUEST NO. 3:

Documents sufficient to show the date of first use of the Hylete Mark.

REQUEST NO. 4:

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

REQUEST NO. 5:

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

REQUEST NO. 6:

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

REQUEST NO. 7:

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

REQUEST NO. 8:

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

REQUEST NO. 9:

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

REQUEST NO. 10:

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

REQUEST NO. 11:

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

REQUEST NO. 12:

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

REQUEST NO. 13:

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

REQUEST NO. 14:

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

REQUEST NO. 15:

All documents exchanged between Hybrid and Hylete.

REQUEST NO. 16:

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

REQUEST NO. 17:

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

REQUEST NO. 18:

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

REQUEST NO. 19:

All documents that Hylete will or may offer as exhibits at trial.

REQUEST NO. 20:

All documents identified or referred to in Hylete's Initial Disclosures.

REQUEST NO. 21:

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85837045.

REQUEST NO. 22:

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

REQUEST NO. 23:

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

REQUEST NO. 24:

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

REQUEST NO. 25:

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

REQUEST NO. 26:

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

Date: March 4, 2014



Wesley W. Whitmyer, Jr.
Andy I. Corea
Michael J. Kosma
ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 Bedford Street
Stamford, CT 06905
Telephone: (203) 324-6155
Facsimile: (203) 327-1096
Email: litigation@ssjr.com
Attorneys for Opposer

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **HYBRID ATHLETICS' FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

3/4/2014
Date



Jessica L. White

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYTELE'S
OBJECTIONS AND RESPONSES
TO OPPOSER'S FIRST SET OF
INTERROGATORIES

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Interrogatories, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. The following Preliminary Statement and General Objections are incorporated into APPLICANT’s responses to each Interrogatory as if APPLICANT separately so objected and/or stated in response to each Interrogatory.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. APPLICANT reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. APPLICANT expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. APPLICANT objects to these Interrogatories to the extent that they seek information that is not in the possession, custody or control of APPLICANT or is in the custody or control of a person or entity that is not a party to this

litigation, or is in the joint custody and control of APPLICANT and PROPOUNDING PARTY, or is equally or more readily accessible to PROPOUNDING PARTY and its counselor is contained in public records.

5. APPLICANT objects to these Interrogatories and accompanying definitions to the extent they require the production or identification of documents, writings, records or publications in the possession of third parties or in the public domain, because such information is equally available to PROPOUNDING PARTY.

6. APPLICANT objects to these Interrogatories to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

7. APPLICANT objects to these Interrogatories to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, or any applicable common law, statutory or constitutional privileges. To the extent that these Interrogatories seek such privileged or protected information, APPLICANT will not provide such information. Moreover, even if APPLICANT inadvertently provides information protected from disclosure by the foregoing privileges or protections, APPLICANT does not waive its right to assert those privileges and/or objections to disclosure.

8. Nothing herein should be construed as an admission by APPLICANT with respect to the admissibility or relevance of any fact or document, or as an admission that APPLICANT agrees with the characterization of such fact or document(s) by APPLICANT. Responses to any Interrogatory are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in

court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. APPLICANT objects to the INSTRUCTIONS on the grounds they seek to impose obligations on it beyond those provided for by the Code of Civil Procedure.

10. These responses are made without prejudice to APPLICANT's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by APPLICANT and other witnesses and/or any developments in the law.

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

RESPONSE TO INTERROGATORY NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows: Ron Wilson; Matt Paulson; and Jennifer Null.

INTERROGATORY NO. 2:

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

RESPONSE TO INTERROGATORY NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's date of first use is at least as early as April 9, 2012. A zazzle.com web order placed on April 9, 2012. Pursuant to Fed. R. Civ. P. 33(d), Applicant directs Opposer to documents bearing bates nos. HYLETE 001-0133.

INTERROGATORY NO. 3:

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

RESPONSE TO INTERROGATORY NO. 3:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 4:

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

RESPONSE TO INTERROGATORY NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

INTERROGATORY NO. 5:

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

RESPONSE TO INTERROGATORY NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Matt Paulson and Jennifer Null were aware of Opposer's mark in 2011. There is no documentation relating to such facts and circumstances.

INTERROGATORY NO. 6:

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document

that evidences such matters, and any person who has knowledge about such matters.

RESPONSE TO INTERROGATORY NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

No one affiliated with Applicant questioned the propriety of Hylete's use of the Hylete mark.

INTERROGATORY NO. 7:

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

RESPONSE TO INTERROGATORY NO. 7:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's items are sold primarily through web sales via website www.hylete.com. In addition, items are also sold through approximately 150 gyms that carry co-branded merchandise.

INTERROGATORY NO. 8:

Fully describe the facts surrounding the selection of the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Ron Wilson designed the mark on the days of March 17 – March 20, 2012. Given that the Applicant's company name is Hylete, Applicant sought to design the mark to have a shield like appearance and contain a stylized "H".

INTERROGATORY NO. 9:

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

RESPONSE TO INTERROGATORY NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Hylete products and/or services sold can be seen on Applicant's website www.hylete.com. Hylete currently sells or intends to manufacture and sell men's and women's performance apparel including but not limited to: shirts, pants, socks, base layer, compression tops/bottoms, and tights. In addition, Hylete manufactures and sells a convertible backpack, a drawstring bag, and sells or intends to manufacture and sell equipment bags, messenger bags, duffle bags, and toiletry bags.

INTERROGATORY NO. 10:

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

RESPONSE TO INTERROGATORY NO. 10:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant advertises, markets, and promotes its products through events and social media.

INTERROGATORY NO. 11:

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

RESPONSE TO INTERROGATORY NO. 11:

APPLICANT objects to this request to the extent it is vague and ambiguous.

Subject to and without waiving the objections above, APPLICANT responds as follows: at least as early as July 7, 2012.

INTERROGATORY NO. 12:

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

RESPONSE TO INTERROGATORY NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's current use of the Hylete mark extends throughout the entire United States.

INTERROGATORY NO. 13:

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

RESPONSE TO INTERROGATORY NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has continuously used the Hylete mark from at least as early as July 7, 2012 to present day.

INTERROGATORY NO. 14:

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

RESPONSE TO INTERROGATORY NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has conducted advertising and marketing nationwide through events and social media.

INTERROGATORY NO. 15:

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

RESPONSE TO INTERROGATORY NO. 15:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

INTERROGATORY NO. 16:

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

RESPONSE TO INTERROGATORY NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 17:

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

RESPONSE TO INTERROGATORY NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 18:

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

RESPONSE TO INTERROGATORY NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 19:

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

RESPONSE TO INTERROGATORY NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has provided all information it is currently knowledgeable of and in its current possession.

INTERROGATORY NO. 20:

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

RESPONSE TO INTERROGATORY NO. 20:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

INTERROGATORY NO. 21:

Identify all manufacturers of goods using the Hylete Mark.

RESPONSE TO INTERROGATORY NO. 21:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

DATE: April 2, 2014

By /kyri tsircou/
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, I have sent a copy of APPLICANT HYLETE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer
St. Onge, Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155 Facsimile (203) 327-1096
Email:litigation@ssjr.com

_____/kyri tsircou/_____

Kyriacos Tsircou, Esq.

Exhibit D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYTELE'S
OBJECTIONS AND RESPONSES
TO OPPOSER'S FIRST SET OF
REQUEST FOR PRODUCTION

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Request for Production, Set One as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

GENERAL OBJECTIONS

1. APPLICANT objects to each request to the extent that it may be construed as calling for information subject to any claim of privilege, including, but not limited to, the attorney/client privilege and/or the attorney work product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of responding party, or its representatives, or relating to mental impressions, conclusions, opinions or legal terms of responding party’s counsel.. Pursuant thereto, APPLICANT and their counsel hereby claim these privileges and object to any such applicable request on this basis.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. APPLICANT objects to each request to the extent that it may be construed as calling for information neither relevant to the subject matter of this action nor likely to lead to the discovery of admissible evidence.

4. APPLICANT objects to each request to the extent that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

5. APPLICANT objects to each request to the extent that the

discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. APPLICANT objects to each request to the extent that it is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

7. APPLICANT objects to each request to the extent that it may be construed as calling for information already in OPPOSER's possession, custody, or control on the grounds that such request is unduly burdensome and oppressive, and otherwise exceeds the bounds of permissible discovery.

8. APPLICANT objects to each request to the extent that it seeks documents, the production of which would violate any constitutional, statutory or common law privacy interest of APPLICANT (the "Privacy Objection").

9. APPLICANT objects to the instructed form of production of certain documents such as photographs, videotapes, or other or other image-recording devices and visual media. APPLICANT will provide the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic media.

10. APPLICANT objects to the demand for production of originals. APPLICANT will provide true and accurate copies of the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic or fixed media.

11. Each of these general objections are incorporated into each of the responses set forth below, each response is made without waiver of any of these general objections.

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION**

REQUEST NO. 1:

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

RESPONSE TO REQUEST NO. 1:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 2:

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

RESPONSE TO REQUEST NO. 2:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 3:

Documents sufficient to show the date of first use of the Hylete Mark.

RESPONSE TO REQUEST NO. 3:

APPLICANT objects to this request to the extent it is: vague and ambiguous; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 4:

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

RESPONSE TO REQUEST NO. 4:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 5:

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 5:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 6:

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

RESPONSE TO REQUEST NO. 6:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 7:

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

RESPONSE TO REQUEST NO. 7:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 8:

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 8:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 9:

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 9:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 10:

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

RESPONSE TO REQUEST NO. 10:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 11:

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

RESPONSE TO REQUEST NO. 11:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 12:

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

RESPONSE TO REQUEST NO. 12:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 13:

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

RESPONSE TO REQUEST NO. 13:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 14:

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

RESPONSE TO REQUEST NO. 14:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 15:

All documents exchanged between Hybrid and Hylete.

RESPONSE TO REQUEST NO. 15:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 16:

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

RESPONSE TO REQUEST NO. 16:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 17:

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

RESPONSE TO REQUEST NO. 17:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 18:

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

RESPONSE TO REQUEST NO. 18:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 19:

All documents that Hylete will or may offer as exhibits at trial.

RESPONSE TO REQUEST NO. 19:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 20:

All documents identified or referred to in Hylete's Initial Disclosures.

RESPONSE TO REQUEST NO. 20:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 21:

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85/837,045.

RESPONSE TO REQUEST NO. 21:

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 22:

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 22:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 23:

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

RESPONSE TO REQUEST NO. 23:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 24:

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

RESPONSE TO REQUEST NO. 24:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 25:

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 25:

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

REQUEST NO. 26:

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

RESPONSE TO REQUEST NO. 26:

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

DATE: APRIL 2, 2014

By _____/kyri tsircou/_____
Kyriacos Tsircou
Attorney for Applicant HYLETE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, I have sent a copy of APPLICANT HYTELE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer
St. Onge, Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905
Tel. (203) 324-6155 Facsimile (203) 327-1096
Email:litigation@ssjr.com

_____/kyri tsircou/_____

Kyriacos Tsircou, Esq.

Exhibit E



April 14, 2014

VIA EMAIL **ONLY**
kyri@tsircoulaw.com

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

Re: Your File Not Known - SSJR File 05828-N0005A
Hybrid Athletics, LLC v. Hylete LLC

Dear Kyri:

We write in an attempt to resolve a discovery dispute relating to Hylete's responses to Hybrid Athletics' First Set of Requests for the Production of Documents and Things as well as Hybrid Athletics' First Set of Interrogatories.

Under 37 CFR §2.116(g) the "Trial Trademark and Appeal Board's standard protective order is applicable during disclosure, discovery and at trial in all opposition . . . proceedings, unless the parties, by stipulation approved by the Board, agree to an alternate order, or a motion by a party to use an alternative order is granted by the board." Per the Board's October 18, 2013 Order the parties held a Discovery Conference on December 26, 2013 and discussed "whether to alter or amend the Standard Protective Order." Neither party had any alterations or amendments to the Standard Protective Order.

Despite the Standard Protective Order in place, Hylete has improperly objected to numerous of Hybrid's discovery requests on the basis the requests seek information that is confidential, privacy protected, and/or trade secrets. TBMP 412.01 ("Parties cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board's standard protective order automatically apply."); *see also, Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1706 n.6 (TTAB 2009). Specifically, Hylete has improperly objected to Hybrid Document Request Nos. 1, 3-14, 16-18, 20 and 22-26 as "seek[ing] information that is confidential, privacy protected, and/or trade secrets." Hylete has also improperly limited the documents it has agreed to provide in response to Hybrid Document Request Nos. 1-26 to "non-confidential, non-trade secret responsive documents." Finally, Hylete has also improperly objected to Hybrid Interrogatory Nos. 1-

4, 6-10, 12-16 and 20-21 as "seek[ing] information that is confidential, privacy protected, and/or trade secrets."

Therefore, Hybrid requests that Hylete update its improper discovery responses to the above-referenced requests by this **Thursday, April 17, 2014**. If Hylete does not agree to update its improper responses, we request a meet and confer for this **Friday, April 18, 2014 at 11AM**.

If we do not reach an resolution to this discovery dispute by Friday, we will proceed with a motion to compel.

Sincerely,

A handwritten signature in dark ink, appearing to read "A Corea", with a horizontal line extending to the right.

Andy I. Corea
acorea@ssjr.com

AIC:MJK
c: Client

From: [SSJR Litigation](#)
To: ["Kyri Tsircou"](#)
Cc: [Kosma, Michael J.](#); [Corea, Andy J.](#)
Subject: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A
Date: Monday, April 14, 2014 5:17:30 PM
Attachments: [11W7172-LQ.2014 04 14 AIC to Tsircou r.PDF](#)

Please see attached correspondence sent on behalf of Andy Corea. Thank you.

Exhibit F

Welsh, Walter B.

From: Kyri Tsircou [kyri@tsircoulaw.com]
Sent: Wednesday, April 23, 2014 9:46 PM
To: SSJR Litigation
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

I am consulting with my client on this matter. Please let me know your availability next week to confer.
Regards,
Kyri Tsircou



From: SSJR Litigation [<mailto:litigation@ssjr.com>]
Sent: Monday, April 14, 2014 2:17 PM
To: 'Kyri Tsircou'
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Please see attached correspondence sent on behalf of Andy Corea. Thank you.

SSJR Litigation
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
litigation@ssjr.com

Exhibit G

Welsh, Walter B.

From: Kosma, Michael J.
Sent: Wednesday, April 30, 2014 8:36 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Kyri,

Hylete has yet to provide substantive responses to Hybrid's discovery requests. It has now been over two weeks since we requested a meet and confer to resolve the current discovery dispute without involving the Trial Trademark and Appeal Board. Moreover, you have still not responded to my email on Thursday, April 24th letting you know we were available for a meet and confer this past Monday.

Therefore, please let us know your availability as soon as possible. If you do not provide us your availability to meet and confer by the close of business tomorrow, we will assume you are unwilling to cooperate in resolving the issues outlined in our letter of April 14, 2014.

Regards,

Michael J. Kosma
Associate
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
fax +1 (203) 327-1096
mkosma@ssjr.com

From: Kosma, Michael J.
Sent: Thursday, April 24, 2014 3:43 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Kyri,

We are available this Monday from 2-5PM EST. Please let us know what time is best to call you.

Regards,

Michael J. Kosma
Associate
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
fax +1 (203) 327-1096
mkosma@ssjr.com

From: Kyri Tsircou [<mailto:kyri@tsircoulaw.com>]
Sent: Wednesday, April 23, 2014 9:46 PM
To: SSJR Litigation
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

I am consulting with my client on this matter. Please let me know your availability next week to confer.
Regards,
Kyri Tsircou



From: SSJR Litigation [<mailto:litigation@ssjr.com>]
Sent: Monday, April 14, 2014 2:17 PM
To: 'Kyri Tsircou'
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Please see attached correspondence sent on behalf of Andy Corea. Thank you.

SSJR Litigation
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
litigation@ssjr.com

Exhibit H

Welsh, Walter B.

From: Kosma, Michael J.
Sent: Thursday, April 24, 2014 3:43 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Kyri,

We are available this Monday from 2-5PM EST. Please let us know what time is best to call you.

Regards,

Michael J. Kosma
Associate
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
fax +1 (203) 327-1096
mkosma@ssjr.com

From: Kyri Tsircou [<mailto:kyri@tsircoulaw.com>]
Sent: Wednesday, April 23, 2014 9:46 PM
To: SSJR Litigation
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

I am consulting with my client on this matter. Please let me know your availability next week to confer.

Regards,
Kyri Tsircou



From: SSJR Litigation [<mailto:litigation@ssjr.com>]
Sent: Monday, April 14, 2014 2:17 PM
To: 'Kyri Tsircou'
Cc: Kosma, Michael J.; Corea, Andy I.
Subject: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Please see attached correspondence sent on behalf of Andy Corea. Thank you.

SSJR Litigation
St. Onge Steward Johnston & Reens LLC

986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
litigation@ssjr.com

Exhibit I

Welsh, Walter B.

From: Kyri Tsircou [kyri@tsircoulaw.com]
Sent: Tuesday, May 06, 2014 1:34 PM
To: Kosma, Michael J.
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

I am available for a call on Weds, between 11 am and 3 pm PDT).



From: Kosma, Michael J. [<mailto:mkosma@ssjr.com>]
Sent: Wednesday, April 30, 2014 5:36 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Kyri,

Hylete has yet to provide substantive responses to Hybrid's discovery requests. It has now been over two weeks since we requested a meet and confer to resolve the current discovery dispute without involving the Trial Trademark and Appeal Board. Moreover, you have still not responded to my email on Thursday, April 24th letting you know we were available for a meet and confer this past Monday.

Therefore, please let us know your availability as soon as possible. If you do not provide us your availability to meet and confer by the close of business tomorrow, we will assume you are unwilling to cooperate in resolving the issues outlined in our letter of April 14, 2014.

Regards,

Michael J. Kosma
Associate
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
fax +1 (203) 327-1096
mkosma@ssjr.com

From: Kosma, Michael J.
Sent: Thursday, April 24, 2014 3:43 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; SSJR Litigation
Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Kyri,

We are available this Monday from 2-5PM EST. Please let us know what time is best to call you.

Regards,

Michael J. Kosma

Associate

St. Onge Steward Johnston & Reens LLC

986 Bedford Street

Stamford, Connecticut 06905-5619

ssjr.com

tel +1 (203) 324-6155

fax +1 (203) 327-1096

mkosma@ssjr.com

From: Kyri Tsircou [<mailto:kyri@tsircoulaw.com>]

Sent: Wednesday, April 23, 2014 9:46 PM

To: SSJR Litigation

Cc: Kosma, Michael J.; Corea, Andy I.

Subject: RE: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

I am consulting with my client on this matter. Please let me know your availability next week to confer.

Regards,

Kyri Tsircou



From: SSJR Litigation [<mailto:litigation@ssjr.com>]

Sent: Monday, April 14, 2014 2:17 PM

To: 'Kyri Tsircou'

Cc: Kosma, Michael J.; Corea, Andy I.

Subject: Hybrid Athletics, LLC v. Hylete LLC Your File Not Known - SSJR File 05828-N0005A

Please see attached correspondence sent on behalf of Andy Corea. Thank you.

SSJR Litigation

St. Onge Steward Johnston & Reens LLC

986 Bedford Street

Stamford, Connecticut 06905-5619

ssjr.com

tel +1 (203) 324-6155

litigation@ssjr.com

Exhibit J

Welsh, Walter B.

From: Welsh, Walter B.
Sent: Wednesday, May 07, 2014 5:11 PM
To: 'Kyri Tsircou'
Cc: Corea, Andy I.; Kosma, Michael J.; White, Jessica L.
Subject: 058258-N0005A - Hybrid v. Hylete

Kyri –

This is a summary of our meet and confer telephone conference earlier today. If I have summarized anything incorrectly, please let me know.

During our call, I asked whether Hylete would agree to extend the discovery deadline by two months. You responded that you would consult with your client and provide a written response by this Friday. I look forward to receiving your response. You also stated that to the extent we extend the discovery deadline, we should also extend the expert disclosure deadline, which is now May 26, 2014. To the extent that Hylete agrees to extend the discovery deadline by the requested two months, we will agree to extend the expert disclosure deadline by two-months, or from May 26, 2014 to July 26, 2014. I understand that the TTAB's automatic form for stipulated extensions will extend this deadline, as well as all the trial deadlines, if we stipulate to a two-month extension of the close of discovery.

Next, I addressed Hylete's objection to certain discovery requests on the grounds that they seek information that is confidential, privacy protected, and/or trade secret. As we explained in our letter of April 14, 2014, a copy of which is attached for your reference, this is not a proper basis for objecting to discovery since the terms of the Board's standard protective order automatically apply. In addition to being an improper basis for objecting, it also prevents us from evaluating and responding to the other discovery objections made in your response. As a result, it is important that we address this as soon as possible.

During the call, I asked you to confirm whether or not your client was withholding documents or information on the grounds that it was confidential, privacy protected, and/or trade secret. You indicated that you needed to speak with your client. We are somewhat surprised that you had not previously discussed this with your client given that we have been requesting a meet and confer on this issue for the past month. In the interest of making a good faith effort to resolve this issue, we will provide three additional days for you to confer with your client before we file our motion to compel. Please provide us with revised discovery responses deleting all objections on the basis that a request seeks information that is confidential, privacy protected, and/or trade secret. To the extent that you do not provide revised responses deleting these objections, we will file our motion to compel next week.

Finally, you indicated that your client did not intend to produce its financial information and sales information because it was not relevant and/or was confidential. As discussed above, the fact that the information is confidential is not a proper ground to withhold it from discovery, as it can be designated attorney's eyes only under the standard protective order. Moreover, we believe that Hylete's financial and sales information is likely to lead to the discovery of admissible evidence. For example, it is indicative of the scope and volume of Hylete's use of its mark prior to filing its trademark application. To the extent you withhold the financial and sales information on the grounds that it is not likely to lead to the discovery of admissible evidence, we will likely move to compel. Please let us know by close of business on Friday whether you intend to produce the requested financial and sales information and when we can expect to receive it.

Thank you for your time today. I look forward to hearing from you by Friday.

Walter

Walter B. Welsh
Associate

St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, Connecticut 06905-5619
ssjr.com

tel +1 (203) 324-6155
fax +1 (203) 327-1096
wwelsh@ssjr.com